

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

AMELIA FOOS, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

ANN, INC., a Delaware corporation doing
business as Ann Taylor Retail, Inc.,

Defendant.

Civil No. 11cv2794 L (MDD)

**ORDER GRANTING MOTION FOR
FINAL APPROVAL OF CLASS
SETTLEMENT and GRANTING IN
PART MOTION FOR ATTORNEYS'
FEES [doc. nos. 29, 34]**

On December 10, 2012, the Court heard plaintiff's motions for final approval of proposed class settlement [doc. #34] and for attorneys' fees, costs, expenses, and incentive fees [doc. #29]. The Court reviewed the motions and supporting papers, including the Amended Settlement Agreement and Release; defendant's statement in support of final approval of class settlement; and the objection filed by Sarah McDonald, who was represented by counsel. Also, the Court considered the arguments of the parties at the hearing. Based on this review, the Court enters the following findings and conclusions.

FINDINGS:

1. Unless otherwise specified, the defined terms in this Order have the same definition as the terms in the Settlement Agreement.

2. The Court has jurisdiction over the subject matter of the action, all parties to the

1 action, and all class members.

2 3. Notice was provided to class members in compliance with Section 3.3 of the
3 Settlement Agreement, due process, and Rule 23 of the Federal Rules of Civil Procedure. The
4 notice: (a) fully and accurately informed class members about the lawsuit and settlement; (b)
5 provided sufficient information so that class members were able to decide whether to accept the
6 benefits offered, opt-out and pursue their own remedies, or object to the proposed settlement' (c)
7 provided procedures for class members to file written objections to the proposed settlement, to
8 appear at the hearing, and to state objections to the proposed settlement; and (d) provided the
9 time, date and place of the Final Fairness Hearing.

10 4. Defendant Ann Inc. gave notice to the class members on June 28, 2012, under 28
11 U.S.C. § 1715(b) and the notice substantively complies with the requirements of that section and
12 was sent to the appropriate state and federal officials.

13 5. For the reasons stated in the Order granting preliminary approval of class
14 settlement and provisional class certification and on the transcribed record of the Final Fairness
15 Hearing, and having been presented with no legal or factual basis to disturb the prior findings,
16 the Court finds and concludes that the proposed Class, as defined below, meets all of the legal
17 requirement for class certification, for settlement purposes only, under Federal Rule of Civil
18 Procedure 23(a) and (b)(3).

19 6. The parties have performed their obligations under the Settlement Agreement.

20 7. The Court finds that the terms and provisions of the Settlement Agreement have
21 been entered into in good faith and are fair, reasonable, and adequate as to, and in the best
22 interest of, each of the class members, and in full compliance with all applicable requirements of
23 the Federal Rules of Civil Procedure, the Rules of this Court, due process, and any other
24 applicable law.

25 8. With respect to the determination that the Settlement Agreement is fair, reasonable
26 and adequate, the Court specifically notes that (a) whether the outcome on the merits would
27 result in a ruling in plaintiff and the class's favor was uncertain; (b) plaintiff faced difficulties
28 obtaining statutory penalties; (c) the Settlement Agreement was reached through negotiations

1 with experienced and informed counsel; and (d) the monetary and non-monetary terms of the
2 Settlement reflect substantial benefits to the settlement class in light of the circumstances of the
3 action and are in line with other settlements.

4 9. An award of not more than \$192,000 in attorneys' fees and costs to class counsel
5 will be entered upon submission of sufficient documentation that permits the Court to find that
6 class counsel's hours and expenses were reasonable and whether a multiplier should be applied.

7 10. An incentive award to plaintiff Amelia Foos of \$1,000.00 is fair and reasonable in
8 light of plaintiff's risks in commencing this action as the class representative, the time and effort
9 spent by plaintiff in litigating this action as the class representative.

10 Based on the foregoing, **IT IS ORDERED THAT:**

11 1. The Class is defined as:

12 All persons who, between September 30, 2010 and September 13, 2012, used a
13 credit card to make a purchase at a California Ann Inc. store and whose Personal
14 Identification Information, including, but not limited to ZIP code, was requested
and recorded by Ann Inc. during the credit card transaction.

15 2. This Order applies to all claims or causes of action settled under the Settlement
16 Agreement, and binds all class members, including those who did not properly request exclusion
17 under paragraph seven of the Order granting preliminary approval of class settlement and
18 provisional class certification. However, this Order does not bind persons who filed timely and
19 valid requests for exclusions.

20 3. The objections of Sarah McDonald are overruled.

21 4. Plaintiff and all class members who did not properly request exclusion are (a)
22 deemed to have released and discharged Ann Inc. from all claims arising out of or asserted in the
23 action and claims released under the Settlement Agreement; (b) barred and permanently enjoined
24 from asserting, instituting or prosecuting, either directly or indirectly, these claims. The full
25 terms of the release described here are set forth in paragraphs 4.2 and 4.3 of the Settlement
26 Agreement and are specifically incorporated herein by this reference.

27 5. Ann Inc. will issue a single Voucher to each class member who submitted a valid
28 and timely Claim Form as provided in the Settlement Agreement under the timeline stated in

1 paragraph 3.13 of the Settlement Agreement.


2 6. Class counsel's specific award of attorneys' fees and costs shall not exceed
3 \$192,000. Upon submission of appropriate documentation on or before December 21, 2012, and
4 an award by the Court, payment shall be made under the timeline stated in Paragraph 2.4 of the
5 Settlement Agreement.

6 7. Plaintiff Amelia Foos is awarded \$1,000.00 as an incentive award. Payment shall
7 be made under the timeline stated in Paragraph 2.5 of the Settlement Agreement.

8 8. The Court will retain jurisdiction over the action and the parties until final
9 performance of the Settlement Agreement.

10 **IT IS SO ORDERED.**

11 DATED: December 10, 2012

12 
13 M. James Lorenz
United States District Court Judge

14 COPY TO:

15 HON. MITCHELL D. DEMBIN
16 UNITED STATES MAGISTRATE JUDGE

17 ALL PARTIES/COUNSEL
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